

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32944-2016

Date of decision-22.10.2016

Manu Datana

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. L.M.Gulati, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') has been filed for quashing of the order dated 18.07.2016 (Annexure P-4) passed by learned Sub Divisional Judicial Magistrate, Indri, vide which the application under Section 173 (8) Cr.P.C. for issuing of appropriate directions to the SHO Police Station Indri for further investigation of the case has been allowed, in FIR No.513 dated 09.12.2015 registered under Section 302 read with Section 34 of Indian Penal Code and Section 25 and 27 of Arms Act at Police Station Indri, District Karnal.

Learned counsel for the petitioner contends that FIR in the instant case was initially recorded under Section 302 read with Section 34 of Indian Penal Code (in short 'IPC') against unknown persons. However, after investigation, Section 302 IPC stands deleted and challan has been presented under Sections 304, 109 and 285 read with Section 34 of IPC and Sections 25 and 30 of Arms Act. It is further stated that the alleged occurrence took

place on the night of 09.12.2015. The deceased received bullet injury on account of fire in the air by the police party as the police people were unable to judge the position of the canter due to heavy fog and the bullet after hitting the canter hit the deceased. It is submitted that after thorough investigation conducted by the investigating agency which has been duly verified by the Deputy Superintendent of Police concerned, Sections 302 and 307 IPC were deleted whereas Section 304 IPC was added. Therefore, the learned Court below has mis-appreciated the facts and ordered further investigation into the matter.

In the instant case, the FIR was registered under Section 302 read with Section 34 of Indian Penal Code and Section 25 and 27 of Arms Act on account of death of one Khushanood who succumbed to a bullet injury. After investigation, Investigating Agency deleted Sections 302 and 307 and presented challan under Section 304 of IPC. The instant application under Section 173(8) of Cr.P.C has been moved by the wife of the deceased seeking further investigation in the matter on the ground that the statements of applicant-wife of the deceased as well as brother of the deceased were not recorded despite the fact that they were present on the spot. It has come on record that there were 42-45 person occupying the canter. However, names of all those persons who were statedly present on the spot have not been given. The plea of the applicant-wife of the deceased is that she was present on the spot and despite this fact her statement has not been recorded. Be that as it may, she being wife of the deceased and present on the spot ought to have been joined in the investigation. She could have been an important

witness to disclose relevant details/facts to the case which may help in proper adjudication of the matter. The applicant-wife has further stated that the statement of another eye witness, namely, Sehzan has also not been recorded. The learned Court below has rightly observed that the applicant has named three witnesses who were allegedly present on the spot and their statements deserved to be recorded and the matter warrants further investigation on the basis of their statements.

This Court does not find any illegality or perversity in the findings recorded by the learned Court below.

Consequently, petition stands dismissed.

Anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

(JITENDRA CHAUHAN)
JUDGE

October 22, 2016

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No